

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW MEXICO

THOMAS MARTINEZ,

Plaintiff,

v.

Case No. CV-14-499

PLAINS TRANSPORTATION, INC., and  
ANDRES ARRELLANO,

Defendants.

**NOTICE OF REMOVAL**

Defendant Alisam Enterprises, LLC, d/b/a Plains Transportation, Inc. (incorrectly identified as “Plains Transportation, Inc.”) (hereinafter referred to as “Plains”), by and through its attorneys, Atkinson, Thal & Baker, P.C, hereby gives notice of the removal to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, of the above-captioned action, formerly pending in the State of New Mexico, County of Valencia, Thirteenth Judicial District Court, as Case No. D-1314-CV-2014-00235. By removing this case, Plains does not waive, and expressly reserves, any and all defenses available to it. The grounds for removal are further stated as follows:

**A. The Removed Case.**

1. On February 25, 2014, Plaintiff filed a civil Complaint for Personal Injury (“Complaint”) against Defendants in the State of New Mexico, County of Valencia, Thirteenth Judicial District Court.

2. Plains accepted service of the Complaint effective as of April 24, 2014. Pursuant to 28 U.S.C. § 1446(a) and D.N.M. LR-Civ. 81.1(a), a true and correct copy of all process, pleadings, and orders served upon the Plains are hereto attached as **Exhibit A**. In addition, pursuant to D.N.M. LR-Civ. 81.1(a), copies of all records and proceedings from the State Court

Action, including Plains' Acceptance of Service, will be filed with the Court within twenty-eight (28) days.

**B. The Diversity of Citizenship Requirement is Satisfied.**

3. To confer subject matter jurisdiction on this Court based on diversity jurisdiction, there must be complete diversity of citizenship between Plaintiff and all Defendants. *See* 28 U.S.C. § 1332(a)

4. Upon information and belief, Plaintiff Thomas Martinez is, and was at the time this suit was filed, a resident and citizen of Valencia County, New Mexico. *See Exhibit A*, Complaint at ¶ 1.

5. Plains is, and was at the time Plaintiff commenced this action, a Texas corporation, organized and existing under the laws of the State of Texas, with its principal place of business in Amarillo, Texas. Accordingly, for the purposes of 28 U.S.C. § 1332 diversity of citizenship, Plains is deemed a citizen of the State of Texas.

6. Upon information and belief, Defendant Andres Arrellano is, and was at the time Plaintiff commenced this action, a resident and citizen of the State of Texas. Accordingly, for the purposes of 28 U.S.C. § 1332 diversity of citizenship, Andres Arrellano is deemed a citizen of the State of Texas.

7. Because there is complete diversity of citizenship between Plaintiff and all Defendants, the diversity of citizenship requirement of 28 U.S.C. § 1332(a) is satisfied.

**C. The Amount in Controversy Requirement is Satisfied.**

8. To confer subject matter jurisdiction on this Court based on diversity jurisdiction, the amount in controversy must exceed \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

9. While Plains disputes the factual and legal merits of Plaintiff's claims raised in the Complaint, Plaintiff's Complaint alleges that "[a]s a result of Defendant's breach[,] Plaintiff has suffered or will suffer past and future medical expense, past, present and future pain and suffering, and loss of pleasure and enjoyment of life[,] as well as hedonic damages and past and future lost earnings and lost earning capacity *in excess of \$75,000.00.*" **Exhibit A**, Complaint at ¶ 15 (emphasis added).

10. Based on the face of Plaintiff's Complaint, which Plains specifically disputes, the amount in controversy is greater than \$75,000, and thus the amount in controversy requirement of 28 U.S.C § 1332(a) is satisfied.

**D. Notice of Removal is Timely.**

11. Plaintiff's State Court Complaint was filed on February 25, 2014 and Plains accepted service of the Complaint effective as of April 24, 2014, making the deadline to file this Notice of Removal May 24, 2014. This Notice of Removal is therefore, timely pursuant to 28 U.S.C. § 1446(b), (c), as it is filed within thirty (30) days of accepting service of the State Court Complaint, and within one (1) year of the commencement of the action. *See Murphy Bros. Inc. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 347 (1999) (the removal period runs from the formal service, and "not by mere receipt of the complaint unattended by any formal service"); *see also* 28 U.S.C. §1446(b)(2)(B).

**E. Consent for this Removal From Defendant Andres Arellano is not Required.**

12. Pursuant to 28 U.S.C. § 1446(b)(2)(A), "all defendants who have been properly joined and served must join in or consent to the removal of the action."

13. Upon information and belief, Defendant Andres Arellano has not been properly served with Plaintiff's Complaint.

14. Accordingly, Defendant Andres Arellano's consent to this removal is not required.

**F. Venue is Proper in this Court.**

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because it is the District Court and division embracing the place where this action is pending.

**G. Proper Notice to the State Court.**

16. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be promptly filed with the Clerk of the District Court of the State of New Mexico, County of Valencia, Thirteenth Judicial District Court, and Plains will serve all counsel of record in this action with this Notice of Removal promptly after its filing.

WHEREFORE, Plains hereby removes this action, in its entirety, from the State of New Mexico, County of Valencia, Thirteenth Judicial District Court, to the United States District Court for the District of New Mexico.

Respectfully submitted,

ATKINSON, THAL & BAKER, P.C.

/s/ Juan M. Marquez

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*Attorneys for Defendant Alisam Enterprises, LLC  
d/b/a Plains Transportation, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23rd day of May, 2014, I filed the foregoing *Notice of Removal* electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Amavalise F. Jaramillo  
P.O. Box 28  
Tome, NM 87060

ATKINSON, THAL & BAKER, P.C.

/s/ Juan M. Marquez  
Juan M. Marquez